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Presidential Debate. Where Is the Question?

In “Mock Debate”, one of the episodes of “Newsroom”, the main character, journalist Will McAvoy, expresses his disappointment with contemporary political debates that do not provide deep commentary and do not reveal the opinions of candidates. Trying to convince a party’s political committee, McAvoy organizes a test version of the “debate as it should be” with journalists impersonating political figures. They are asked tough, essential questions. A debate of such a type, full of follow-up questions, puts the impersonated politicians on the spot and reveals their ignorance, thus reflecting the demagogical arguments of real-life politicians. McAvoy’s proposal was turned down because an open formula was unacceptable for the party’s negotiators.

McAvoy attempted to raise a few questions about contemporary presidential debates. Firstly, who really makes decisions upon the shape and formula of the presidential debates? Secondly, what kind of limitations do we observe in the discourse? Do we still have a debate, or is it just a staged spectacle in which everything is carefully planned and rehearsed? Do moderators and journalists have any real impact on the debate?

It is surprising that the question of who stages presidential debates and who pulls the strings is not a popular research subject among scholars and academics. The subject is also often neglected by journalists and civil activists, keeping the majority of voters unaware that the current presidential debate is more of a theatrical spectacle than a meaningful political dispute.

Who should be admitted to the stage and who should make decisions concerning it?

As Kevin J. Coleman, Joseph E. Cantor, and Thomas H. Neale remarked in their report to the Congress: “televised debates now constitute one of the most

important elements in presidential electoral politics. ... Candidates devote substantial time and effort in preparing for debates, as it is widely believed that their performance may significantly affect their chances of electoral success. Extensive briefings and rehearsals are conducted, to anticipate questions and issues which may be raised. Careful attention is paid to the nominee's physical appearance, in order to project an appealing, if not 'presidential' image" (Coleman, Cantor, Neale 2000: 37).

In 1960 the very first presidential debate between Nixon and Kennedy was aired on television. This debate revealed to the future presidential candidates the impact that a televised political debate can have. Television has become a more and more dominant medium of political communication and has altered the dynamics of political campaigns. Therefore, the issue of accessibility and control over presidential debates has become one of the most vital issue of US politics. The first televised debate was organized by broadcast networks, after long and detailed negotiation about the format of this debate (Schroeder 2000: 15-17).

Because of the importance and possible impact of presidential debates, we can observe temptations to manipulate the course and outcomes of the debates. There has been an almost constant tendency to excluding minor party candidates from the debate process and decrease their appearance on TV. The main obstacle to exclude minor party candidates from televised debates was Section 315 of the Federal Communications Act from 1934 (47 U.S.C. §§ 301-399). The act required broadcasters to include in debates all candidates for a particular office, or give them equal time. The equal time rules appeared in the very first regulation of broadcasting, the Radio Act of 1927, which "established a principle of absolute equality for competing political candidates in the 'use' of broadcast facilities" and was a forerunner of Section 315 of the 1934 Communications Act (Chemerinsky 1985: 4).

The Federal Communications Commission's interpretation applied Section 315 of the Communications Act into the political broadcast debates in a very strict and direct way. Under such an interpretation, the equal time requirement also applies to news programs and news events broadcast by the station.¹ As Chemerinsky pointed out, "this ruling was strongly criticized

¹ This rule appeared in the case of *Lar Daly*, a highly controversial candidate who tried to force the broadcasting company to provide him free time and free coverage based on the "equal time provision". The Columbia Broadcasting System filed a petition to the FCC, denying Daly equal time. The petition was denied, and the provision guaranteeing equal time for all candidates to public offices was sustained. 26 F.C.C. 715 (1959), Decision Federal Commission. For further development see: *Lar Daly v. Columbia Broadcasting System, Inc.*, *Lar Daly v. West Central Broadcasting Company*, *Lar Daly v. American Broadcasting-Paramount Theatres, Inc.*, 309 F.2d 83 (7th Cir. 1962), <https://www.courtlistener.com/ca7/2jQz/lar-daly-v-columbia-broadcasting-system-inc-lar-da/>.

because it was feared that application of the equal time requirements to newscasts would tend to dry up meaningful radio and television coverage of political campaigns” (Chemerinsky 1985: 5) Therefore, Congress took steps to override the effects of the initial FCC interpretation.

The seminal presidential debates of 1960 between Richard Nixon and John F. Kennedy were made possible only when Congress specifically stated that the access to broadcasters to provide equal opportunities “is suspended for the period of the 1960 presidential and vice presidential campaigns with respect to nominees for the offices of President and Vice President of the United States” (Public Law 86-677, S. J. Res. 207, August 24, 1960). Thanks to this suspension, four debates between Kennedy and Nixon were sponsored by three commercial networks. Following the 1960 campaign, the FCC returned to strict enforcement of the equal time rule (Kies 1967-68: 266-291). From 1960 to 1976 no television debates were held, mainly because of the equal-time provisions. The other reason was that at least one of the major party candidates expressed his strong unwillingness to participate in the televised debate: Lyndon B. Johnson did not want to participate in the televised debate in 1964 and Richard Nixon opposed participating in both elections (1968 and 1972).

The exclusion of minor candidates gave rise to a lot of controversy. However, to legitimize this exclusion, Congress took a few steps and also gradually withdrew its support for a direct interpretation of the equal time provision in the Communications Act by amending it. According to the new version live broadcasts of debates were interpreted as “bona fide news events” and were exempted from equal time requirements (Neuman 1994: 39-40). The television debates became reduced to a spectacle of two actors.

The situation changed in 1975, when FCC reversed its interpretation of the equal time provision in the so-called *Aspen rule*. According to this, the FCC exempted debates by qualified major party candidates as long as they were conducted as bona fide news events. To qualify as a bona fide news event, the debate must be “sponsored and controlled by a third party not associated with the licensees”, and the sponsor must also be a non-broadcasting entity (55 F.C.C.2d 697-712). It provides the possibility to organize presidential debates in a manner that would apply the bona fide rule, and would be conducted in a civic minded manner.

From 1976 to 1984, as a result of this interpretation, presidential debates were run by the civic-minded League of Women Voters. The league was established in 1920, on the eve of the final ratification of the 19th Amendment. The philosophy of the LWV was “nonpartisanship, consensus on issues, study before action and concerted advocacy” (Neuman 1994: 13). Acting as a host for presidential debates, the LWV became responsible for the selection of

questions, a moderator, and the location of the debate (Self 2007: 331-48). The LWV codified the formats of presidential debates, splitting them into categories based on how questions were asked. As Chemerinsky observed, “[i]n most cases, the League of Women Voters invited the candidates to debate and there was little disagreement as to how the debates would be conducted. The candidates met with representatives of the sponsor and the debate was arranged. It was rare for other organizations to try to compete with the League of Women Voters’ sponsorship” (Chemerinsky 1985: 8). The negotiation process with the candidates was short and the LWV was the main player. According to Friedenburg, during the 1980 campaign the negotiations to arrange the debates took only six hours (Friedenburg 1981: 96). Initially LWV held a very strong position in the negotiation process. The league ensured that the presidential debates served the interests of the American people, rather than those of the political parties. Therefore, LWV adopted an open format, meaning that the politicians could not prepare answers in advance. They were allowed highly unpredictable follow-up questions. As the negotiation process in 1976 and 1980 was very short, and the rules adopted by the LWV were rather simple, there was no need to prepare a special debate contract. However, the debate in 1980 gave rise to many controversies over attempts to include independent party candidate, John Anderson, in the negotiation process, which led to Jimmy Carter’s refusal to take part in the debate with Anderson (Minow, LaMay 2008: 55-57).

In 1983, CFF changed its interpretation of Section 315 one more time. This time FCC permitted stations to sponsor the debates themselves without any obligation to provide equal time to all candidates in an election (Chemerinsky 1985: 2). Thus, stations could arrange and hold debates in their studios, using their personnel, and did not need invite all of the candidates in an election to participate. The FCC claimed that “exempting broadcaster sponsored debates should serve to increase the number of such events, which would ultimately benefit the public”. However, FCC admitted that they had not conducted any research to validate this claim, and they did not know of any organization that could provide data supporting their conclusion (Chemerinsky 1985: 15-16).

Since 1984, both Republican and Democratic parties have put pressure on the LWV to change the formula of the debates. Both parties have also taken many steps to increase the role of the two dominant parties, exclude the third party candidates, decrease the role of LWV in the process and take control. In 1985, delegates of both parties – the Democratic National Committee chairman Paul Kirk and Republican National Committee chairman Frank Fahrenkopf – participated in the Commission on National Elections. The Commission was a private study formed by the Center for Strategic and

International Studies in February 1985 to examine the process of electing the U.S. president and vice-president. Even though the study was supposed to have a strong scientific and academic background, it became dominated by the bipartisan group of American leaders. The Commission on National Elections prepared an 80-page report entitled *Electing the President. A Program for Reform: a Final Report of the Commission on National Elections*. The report offered several recommendations for what should be done in the future in order to formalize the debate process. According to the report "The commission believes that this institutionalization is most likely to take place if the two political parties assume direct responsibility for sponsoring the joint appearances ... therefore urges the two parties to assume responsibility for sponsoring and otherwise ensuring that presidential candidate joint appearances are made a permanent and integral part of the presidential election process. ... The parties may decide to delegate sponsorship or to involve other groups or the television networks, but ultimate responsibility should rest with the parties. ... the commission urges the two parties to set up a mechanism, such as a joint committee. Although some details, such as format, will most likely have to await approval by the participants, the commission urges that, before the nominating conventions, the joint committee deliberate and settle as many of the arrangements as possible, such as the number, dates, and locations of the joint appearances, the subject matter to be discussed, and how the panels of questioners, if any, are to be selected" (Hunter 1986: 6, 43).

Thus the report emphasized the role of the two major political parties in the organization of the presidential debates. The authors also had a very strong conviction that the engagement of the delegates of the two major parties could be the only guarantee to set a professional mechanism of debates. The report recommended the creation of a new joint body consisting of representatives of the Democratic and Republican parties that would provide further institutionalization of the process of presidential television debates. The report not only provided carefully researched argumentation for further involvement of the two major political parties, but also was a prominent voice in the discussion of why the role of the political parties should be strengthened, and, in consequence, why this role cannot be performed by a non-partisan organization like the League of Women Voters. The report also had other far-reaching consequences. In 2010 the government of Canada, searching for a solution to how to change their debate process, referred to this report (Rogers 2010: 37).

The Memorandum of Understanding, prepared during the negotiations in 1984, shaped the format of the debate: it was designed to perform an informative function for voters, and did not intend to provide comfort to the candidates. Each of them was "questioned by a panel of four journalists. The spon-

soring organization will submit a list of potential panelists to each candidate for each debate. Each candidate will designate a list of acceptable choices. The sponsoring organization will then select the panelists from the choices acceptable to both sides. If less than four names are acceptable to both sides, the sponsoring organization will provide additional names until four names are found that are acceptable to both sides” (Kraus 2000: 56). Thus, even though the candidates had an impact on the panelists’ selection process, the final decision was made by the sponsoring organization, in that case the LWV.

Moreover, the questioning patterns not only allowed for follow-up questions, but also made them mandatory: “The panelists will ask a question of Candidate A. Candidate A will answer for two and one-half minutes. The same panelist will ask a follow-up question to Candidate A. Candidate A will answer for one minute. The same question is then asked of Candidate B. Candidate B will answer for two and one-half minutes. The same panelist asks a follow-up question of Candidate B. Candidate B will answer for one minute” (Kraus 2000: 56).

The Memorandum of 1984 gave a strong position and power to the sponsoring organization: “[t]he sponsoring organization will determine the order of questioning by the panelists, subject to approval by each candidate. A moderator will be selected by the sponsoring organization, subject to approval by each candidate. The moderator shall open and close the debate and be responsible for strictly enforcing all time limits. The moderator shall not ask any questions, or otherwise participate in the debate (Kraus 2000: 56).

Stealing the floor and setting a new stage – still *bona fide*?

The report prepared by the Commission on National Elections provided a thoroughly researched background for establishing a new body, controlled by the leaders of two major parties. As a result of the report, in 1987 the Commission on Presidential Debates (CPD) was established. According to the self-declared mission, it was established “to ensure that debates, as a permanent part of every general election, provide the best possible information to viewers and listeners”.² As Kathryn Dunn stated, the “rationale behind party sponsorship is that the national party chairmen could require their party’s nominee to participate in the Commission-sponsored debates and thereby eliminate the quadrennial ‘debate about debates.’ The Commission’s membership consisted of the Chairmen of the Democratic National

² <http://www.debates.org/index.php?page=about-cpd>.

Committee and the Republican National Committee, a ten-member Board of Directors (five Democrats and five Republicans) and a forty-member advisory board. Although the Commission is technically 'non-partisan' for tax purposes, the Chairmen of the Commission and the Board of Directors are either Democrats or Republicans, and in this respect the Commission is 'bi-partisan'" (Dunn 1990: 653). So even though the commission is a non-governmental and non-partisan entity, it has very strong ties with two dominant parties and the government. The flow of human resources indicates that individuals who were members of CPD after a few years take a position within the administration.

When in 1988 the political parties wanted to have more control over the debates, representatives of Bush and Dukakis signed a memorandum of understanding. The memorandum was negotiated in private, providing a long and detailed list of conditions under which the candidates of both parties agreed to debate. Representatives of candidates dictated the rules of sponsorship, and according to the agreed memorandum, the LWV had no influence or ability to shape the debate when the memorandum was signed. Candidates' representatives divided sponsorship. "The first Presidential debate and the Vice Presidential debate will be offered to the Commission on Presidential Debates for their sponsorship. The second Presidential debate will be offered to the League of Women Voters for their sponsorship. Sponsorship will be conditioned upon agreement to all provisions of this Memorandum of Understanding" (Kraus 2000: 70).

In the memorandum they agreed upon everything related to the debate: how the panelists would be selected, how to craft the audience, and how the debate would proceed. They took into consideration the best interests of candidates of both parties, not the integrity of the debate itself, therefore follow-up questions were banned. And when they had agreed on all the details, the campaigns presented the document to the League. This put the League in a position "take it or leave it", and after signing the memorandum, the LWV had no real influence on the format of the debate. It is essential to keep in mind that the LWV was not invited to participate in the negotiation process of this memorandum. The CPD wanted to keep the negotiation process confidential.

The memorandum prepared a the stage for a takeover of the debate process by the CPD. Even the memorandum itself predicted this kind of event: "In the event that either the Commission or the League does not accept the conditions of sponsorship per this agreement, representatives of the two candidates will immediately use their best efforts to obtain a mutually agreeable alternate sponsor" (Kraus 2000: 70). It was highly improbable that the CPD would not accept the sponsorship because these strict candidate-generated rules and procedures gave more control to the party representative and the

CPD itself. The support of the CPD for this memorandum of understanding of 1988 indicated that it acted for the benefit of the candidates of the two major parties rather than on behalf of the American viewers and listeners. The debate lost its spontaneous character, but the precise scenario highly limited the unexpected questions that might have revealed the candidates incompetence. One of the most important changes between the Memorandum of Understanding of 1984 and the Memorandum of Understanding of 1988 was the exclusion of follow-up questions. The debate became much more superficial, and it became much easier for candidates to prepare answers in advance.

The LWV withdrew their sponsorship when they discovered that the Memorandum of Understanding had been rejected, and the LWV had no impact on the debate. The LWV president, Nancy Neuman, explained the reasons behind this decision during a press conference: "The League of Women Voters is withdrawing sponsorship of the presidential debates because the demands of the two campaign organizations would perpetrate a fraud on the American voter. It has become clear to us that the candidates' organizations aim to add debates to their list of campaign-trail charades devoid of substance, spontaneity and answers to tough questions. The League has no intention of becoming an accessory to the hoodwinking of the American public" (Neuman 1994: 48).

Newton N. Minow, who for many years was a member of the Commission of Presidential Debates, presents a different point of view, claiming that the CPD was the savior of the televised presidential debates. Even though Minow's source of information was primarily secondhand, it revealed the climate of tension and disagreements between parties and the League of Women Voters. The two groups had aims that were irreconcilable. "Subsequently I heard that the negotiations between the parties and the League went from tense to hostile, though I did not participate in them. The campaigns were upset with the League, and the League was upset with the campaigns. The candidates would insist on conditions for their participation, then hide behind the League when critics came calling. There was a basic problem of truth in advertising, of public accountability" (Minow, LaMay 2008: 60).

The main reason for taking the role of leader away from the LWV, according to Minow, was the poor and inefficient performance of the League itself. "As I participated in the frustrating inside negotiations for the 1980 debates, I began to think that sponsorship of the debates needed to be strengthened if they were to continue. Institutionalizing presidential debates had been the goal of the League of Women Voters, but by 1984 it was clear to me that despite its valiant efforts the League simply did not have the clout to succeed. Under its sponsorship, the debates were ad hoc affairs, often put together at the last minute. The painful negotiations that produced the 1984 debates

showed that they were susceptible to behind-the-scenes manipulation by the campaigns, which would establish the terms for the debate and complain about or veto the moderators, then pretend that it was all the League's doing. In 1976, 1980, and 1984, the debates occurred only after a long period of sporadic negotiations followed by a late flurry of eleventh-hour negotiations between the leading candidates and, in an ever-diminishing role, the League" (Minow, LaMay 2008: 60).

The moment when the CPD took control of the presidential debates was the beginning of a new era. Ever since 1988, the negotiators for the Republican and Democratic nominees have secretly drafted debate contracts that dictate how the presidential debates will be structured. The Memorandums of Understanding were signed from 1992 till 2012. None of them, except the last one in 2012, were revealed to the public. The case of the memorandum of 1996 is the best proof of how well-guarded and secret the process of negotiation between the candidates' representatives was. As Kraus was able to confirm, "There was a Memorandum of Understanding to which the candidates and ultimately the CPD agreed. But not even Newt Minow, a CPD board member, knew the agreement. Astonishingly, none of the significant production personnel received a copy of it. Each of the 1996 network pool producers – CNN's John Towriss, ABC's Bob Wheelock, and CBS's Jack Kelly – told this writer he had not seen a copy of the agreement between the candidates. Evidently, the restrictions, rules, and procedures were passed on in production meetings of one kind or another. Robert (Bob) Asman, CPD executive producer ... did not have a copy of the agreement, but did have handwritten notes (removed from a yellow pad in his files) outlining the contract" (Kraus 2000: 111).

Even though the CPD claims to be impartial, there are a lot of personal ties between parties and the CPD. The Republican and Democratic debate negotiators have strong ties to the CPD. For example, Vernon Jordan was a CPD director before becoming Bill Clinton's debate negotiator in 1996 and Kerry's debate negotiator in 2004. David Norcross was the vice-chairman of the CPD before becoming Bob Dole's debate negotiator in 1996 (Farah 2004: 19).

The creation of the CPD, and its assuming of control over the presidential debates has had many important consequences.

1. The CPD was not interested in inclusion of the minor party candidates, so the debates were limited to the candidates of the two major parties.
2. The CPD acted on behalf of the parties and their candidates, which excluded any possibility to present candidates in an unfavorable light.
3. Candidates and parties themselves took control of the final form of the debate.

Memorandum of 2012 – eluding questions, eluding debate

The 21-page memorandum of understanding 2012 was leaked on October 16th, 2012. As the Huffington Post reported, the memorandum had previously had been secret one. It's only the fourth time when this type of contract is available to the public. The memorandum was released "after both campaigns raised concerns about moderator Candy Crowley's comments about her role in the debate."³ In her interview for CNN, she revealed that "once the table is kind of set by the town-hall questioner, there is then time for me to say, 'Hey, wait a second, what about X, Y, Z?'"⁴ After Crowley's famous "XYZ declaration" campaign counsels Bob Bauer for President Obama and Ben Ginsberg of the Romney campaign expressed concern that the moderator's comments seemed to be in direct conflict with the terms of their agreement. The commission sent back word that it would discuss the matter with Crowley and reconfirm her function.⁵ The Memorandum of Understanding of 2012 stated, "In managing the two-minute comment periods, the moderator will not rephrase the question or open a new topic The moderator will not ask follow-up questions or comment on either the questions asked by the audience or the answers of the candidates during the debate or otherwise intervene in the debate except to acknowledge the questioners from the audience or enforce the time limits, and invite candidate comments during the two-minute response period". Moreover, "The candidates may not ask each other direct questions during any of the four debates" (MOU 2012: 4-5). The memorandum even limited the mobility of a candidate, not allowing him to "move from his designated area behind the respective podium" (MOU 2012: 16).

More important than the declining role of the moderator is the strict and reaffirmed exclusion of follow-up questions. "The audience members shall not ask follow-up questions or otherwise participate in the extended discussion, and the audience member's microphone shall be turned off after he or she completes asking the questions" (MOU 2012: 16). Observing the amount of regulations and restrictions, George Farah, who for many years had been fighting for more open debate, commented: "The town hall debate we're going to see tonight is the most constrained and regulated town hall debate in presidential debate history. The first town hall debate was introduced in 1992, and no one knew what anyone was going to ask, none of the audience members were going to ask. The moderator could ask any follow-up questions.

³ http://www.huffingtonpost.com/2012/10/15/presidential-debate-memo-released_n_1968323.html.

⁴ <http://thepage.time.com/2012/10/14/moderator-role-under-scrutiny-before-the-debate/>.

⁵ <http://thepage.time.com/2012/10/14/moderator-role-under-scrutiny-before-the-debate/>.

It was exciting, and it was real. ... In 1996, they abolished follow-up questions from the audience. ... In 2004, they began requiring that every single question asked by the audience be submitted in advance on an index card to the moderator, who can then throw out the ones he or she does not like. And that's why the audience has essentially been reduced, in some ways, to props, because the moderator is still ultimately asking the questions."⁶

Analyzing carefully the text of MOU we might agree that the debates of 2012 were the most regulated and constrained. There were articles in the section dedicated to the precise size and color of the chairs, the number of staff that could be present, the temperature that was agreed upon by the candidates and would be maintained in the hall during the entire debate, as well as the locations of cameras and TV coverage (MOU 2012: 10-18). It was a precisely staged spectacle in which every actor had a script and every prop had its own place.

The last concern raised by Farah is the lack of impartiality and the fact that CPD is financed primarily by multinational corporations.⁷ The financial involvement of multinational corporations raised concerns about lobbying and the future impact of those corporations. Nancy Neuman, during an interview with Farah, stated "One of the big differences between us and the commission was that the commission could easily raise hundreds of thousands of dollars in contributions. They did it very quickly in 1988. Even though I would go to some corporations, I would be lucky to get \$5,000. Why? Because under the commission's sponsorship, this is another soft-money deal. It is a way to show your support for the parties because, of course, it is a bipartisan commission and a bipartisan contribution. There was nothing in it for corporations when they made a contribution to the League. Not a quid pro quo. That's not the case with the commission" (Farah 2004: 15-16).

Conclusion

When we look very carefully at the memorandum that was negotiated before the last presidential debate, and when we see that virtually all aspects of the debate were settled prior to it by the candidates' representatives it is very hard to believe Minow's opinion when he claimed that "televised presidential debates are actually much less structured than formal academic debates, where both sides know what to expect" (Minow, LaMay 2008: 92). During

⁶ <http://www.theguardian.com/commentisfree/2012/oct/16/presidential-debate-issues>.

⁷ <http://opendebates.org/theissue/corpsponsor.html>.

presidential debates in the contemporary form both sides know exactly what to expect.

Arguments that the CPD exclude third-party candidates are far from accurate. The exclusion started when the LWV agreed that Anderson should not participate in the debate with the candidates of the two major parties. But under the CPD rule, the exclusion of third-party candidates from the televised debate was established as an ordinary element of the election process. This exclusion established by the LWV and sustained by the CPD was one of the most important elements in the process of the marginalization of minor party candidates. As Katherine Dunn rightly observed, "Prior to the days of media-centered politics, the discrepancy in recognition and exposure between minor and major party candidates was not nearly so pronounced. A campaign's success was measured by its ability to generate support through grass-roots campaigning that effectively communicated appealing policy programs and positions" (Dunn 1990: 647). The presidential campaign has been irreversibly changed by the nature and dynamics of mass media. Dunn made a distinction between free media and paid media. She refers to paid media as "campaign television commercials written and produced by campaign media consultants and paid for by the campaign" (Dunn 1990: 647), while free media consists of all news coverage (including appearance on the talk shows).

Kathleen Jamieson and David Birdsell appropriately point out the benefits of minor party grass-roots campaigning prior to the media age: "[Third parties] have been the originators of such important policy innovations as the direct election of senators, the graduated income tax, and women's suffrage. It is no coincidence that each of these policy proposals occurred before politics was dominated by the mass media" (Jamieson, Birdsell 1988: 213).

Followed by the exclusion of minor party candidates we can observe unprecedented constraints and limitations imposed on the essence and subjects of the debates since 1988. Important but inconvenient issues are never raised by the two major party candidates. Credible third-party candidates are excluded from the proceedings altogether, and in this way both parties seized control of the debates. The current system has strong critics, and many Civic initiatives have been taken to change the formula of the debates, among them Open Debates⁸ and the Free and Equal Elections Foundation

It is essential to keep in mind that one of the most vital problems identified by the Founding Fathers was how to choose suitable representatives who would be capable of governing without resorting to corruption. James Madison, a leading figure in the drafting of the US Constitution, eloquently described the importance of an informed citizenry to democratic gover-

⁸ <http://www.opendebates.org>.

nance: “A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives” (Madison 1865: 226-27). Among many other instruments, one of the leading ones was public debate. In a similar way, he asserted that “the advancement and diffusion of knowledge” is “the only Guardian of true liberty” (Madison 1996, 41-42). The way in which the current presidential debates proceed raise serious concerns whether the Madisonian ideal can be fulfilled. As we look carefully at the Memorandum of Understanding of 2012, we will see that society is powerless, and that advancement and diffusion of knowledge no longer occur during the debates. Careful analysis of regulations and the contents of the Memorandum of Understanding of 2012 reveals why the utopian dream of Will McAvooy cannot be fulfilled. The question that now needs to be posed is as follows: What can be done to achieve the Madisonian dream and ideal?

References

- Barkatullah, N., 1999, Restricting the Marketplace of Ideas: Third Parties, Media Candidates, and Forbes’ Imprecise Standards, *Saint Louis University Public Law Review*, 18, pp. 485-502.
- Bitzer, L., Rueter, T., 1980, *Carter vs. Ford: The Counterfeit Debates of 1976*, Madison WI: University of Wisconsin Press.
- Blenkinsopp, A.J., 2008, Continuing the Debate about Presidential Debates, *Northwestern University Law Review Colloquy*, 103, p. 132; LexisNexis Academic: Law Reviews. Web. 30 December 2012.
- Carlin, D.B., McKinney, M.S. eds., 1994, *The 1992 Presidential Debates in Focus*, Westport CN: Praeger.
- Chemerinsky, E., 1985, Changing the Rules of the Game: the New FCC Regulations on Political Debates, *Hastings Journal of Communications and Entertainment Law*, 7, pp. 1-18.
- Coleman, K.J., Cantor, J.E., Neale, T.H., 2000, *Presidential Elections in the United States: A Primer*, CRS, GPO, Washington. Retrieved from <http://www.senate.gov/reference/resources/pdf/RL30527.pdf>.
- Collier, Ch.W., 2008, Presidential Debates and Deliberative Democracy, *Yale Law Journal*, 117, Pocket Part 288. Retrieved from <http://yalelawjournal.org/images/pdfs/695.pdf>.
- Commission on Presidential Debates, December 26, 2012. Retrieved from <http://www.debates.org/index.php?page=about-cpd>.
- Corrado, A., 1995, *Let America Decide: The Report of the Twentieth Century Fund Task Force on Presidential Debates*, New York: The Twentieth Century Fund.

- Drew, E., 1981, *Portrait of an Election: The 1980 Presidential Campaign*, New York: Simon and Schuster.
- Drew, E., 1985, *Campaign Journal: The Political Events of 1983-1984*, New York: Macmillan.
- Drew, E., 1989, *Election Journal: Political Events of 1987-1988*, New York: W. Morrow.
- Dunn, K.A., 1990, Time for Fairness in the Presidential Electoral Process: Major and Minor Party Candidates in Competition, *Journal of Law & Politics*, 6(3), pp. 625-660.
- Eisner, K.D., 1993, Non-Major-Party Candidates and Televised Presidential Debates: The Merits of Legislative Inclusion, *University of Pennsylvania Law Review*, 141(3), pp. 973-1027.
- Farah, G., 2004, *No Debate: How the Republican and Democratic Parties Secretly Control the Presidential Debates*, New York: Seven Stories Press.
- Federal Communications Act of 1934, 47 U.S.C. §§ 301-399 (1982).
- Federal Communications Commission Reports: Decisions and Reports of the Federal Communications Commission of the United States, 26, 1959.
- Federal Communications Commission Reports: Decisions and Reports of the Federal Communications Commission of the United States, 55, 1959.
- Friedenberg, R.V. ed., 1994, *Rhetorical Studies of National Political Debates, 1960-1992*, 2nd ed., Westport CT: Praeger.
- Friedenberg, R.V., 1994, The 1992 Presidential Debates, in R.E. Denton Jr. ed., *The 1992 Presidential Campaign: A Communication Perspective*, Westport CT: Praeger.
- Friedenburg, R.V., 1981, Selfish Interests of the Prerequisites for Political Debate: An Analysis of the 1980 Presidential Debate and Its Implications for Future Campaigns, *Journal of the American Forensic Association*, 18(2), pp. 91-98.
- Greenfield, J., 1982, *The Real Campaign: How the Media Missed the Story of the 1980 Campaign*, New York: Summit Books.
- Huffington Post, December 26, 2012. Retrieved from http://www.huffingtonpost.com/2012/10/15/presidential-debate-memo-released_n_1968323.html.
- Hull, E.B., 2004, Independent Candidates' Battle against the Exclusionary Practices of the Commission on Presidential Debates, *Iowa Law Review*, 90, pp. 313-345.
- Hunter, R.E., 1986, *Electing the President: A Program for Reform: A Final Report of the Commission on National Elections*, Washington D.C: Center for Strategic and International Studies, Georgetown University.
- Jackson-Beeck, M., Meadow, R.G., 1979, The Triple Agenda of Presidential Debates, *Public Opinion Quarterly*, 5, pp. 173-180.
- Jamieson, K.H., Birdsell, D.S., 1988, *Presidential Debates: The Challenge of Creating an Informed Electorate*, Oxford: Oxford University Press.
- Kies, D., 1967-1968, Equal Time for Political Candidates, *Intramural Law Review of New York University*, 23, pp. 266-291.
- Kraus, S., 2000, *Televised Presidential Debates and Public Policy*, 2nd ed., Hillsdale NJ: Erlbaum Associates.
- Lanoue, D.J., Schrott, P.R., 1991, *The Joint Press Conference: The History, Impact, and Prospects of American Presidential Debates*, New York: Greenwood Press.

- Levi, L., 2001, Professionalism, Oversight, and Institution-Balancing: The Supreme Court's Second Best Plan for Political Debate on Television, *The Yale Journal on Regulation*, 18, pp. 315-382.
- Madison, J., 1865, *Letters and Other Writings of James Madison, Fourth President of the United States*, vol. 3, Philadelphia: J.B. Lippincott.
- Madison, J., Mattern, D.B., 1997, *James Madison's "Advice to My Country"*, Charlottesville: University Press of Virginia.
- Matey, P.B., 2003, Abundant Media, Viewer Scarcity: A Marketplace Alternative to First Amendment Broadcast Rights and the Regulation of Televised Presidential Debates, *Indiana Law Review*, 36, pp. 101-147.
- Memorandum of Understanding (MOU), 2012. Retrieved from <http://www.opendebates.org/documents/110073567-The-2012-Debates-Memorandum-of-Understanding-Between-the-Obama-and-Romney-Campaign.pdf>.
- Minow, N.N., LaMay, C.L., 2008, *Inside the Presidential Debates: Their Improbable Past and Promising Future*, Chicago: University of Chicago Press.
- Minow, N.N., Sloan C.M., 1987, *For Great Debates: A New Plan for Future Presidential TV Debates*, New York: Priority Press Publications.
- Mitchell, L.M., 1979, *With the Nation Watching: Report of the Twentieth Century Fund Task Force*, Lexington MA: D.C. Heath.
- Neuman, N.M., 1994, *The League of Women Voters in Perspective, 1920-1995*, Washington DC: League of Women Voters.
- Open debate, December 26, 2012. Retrieved from <http://opendebates.org/theissue/corpsponsor.html>.
- Paglin, M.D., Hobson J.R., Rosenbloom J. eds., 1999, *The Communications Act: A Legislative History of the Major Amendments, 1934-1996*, Silver Spring MD: Pike & Fischer – A BNA Company.
- Public Law 86-677 86th Congress, S. J. Res. 207, August 24, 1960, Retrieved from http://transition.fcc.gov/Bureaus/OSEC/library/legislative_histories/444.pdf.
- Ranney, A., 1980, *The Past and Future of Presidential Debates*, Washington D.C: American Enterprise Institute for Public Policy Research.
- Rogers, M., 2010, Reforming Federal Election Debates in Canada, January, Centre for the Study of Democracy, Queen's University. Retrieved from http://www.queensu.ca/csd/publications/Reform_Fed_Election_Debates_Canada.pdf.
- Schroeder, A., 1996, Watching between the Lines: Presidential Debates as Television, *Harvard International Journal of Press/Politics*, 1-4, pp. 57-75.
- Schroeder, A., 2000, *Presidential Debates: Forty Years of High-Risk TV*, New York: Columbia University Press.
- Self, J.W., 2007, Elections: Debating the 1976 Debates: Establishing a Tradition of Negotiations, *Presidential Studies Quarterly*, 37(2), pp. 331-348.
- Swerdlow, J.L. ed., 1987, *Presidential Debates: 1988 and Beyond*, Congressional Quarterly. Retrieved from <http://www.gwu.edu/~action/2008/chrndebs08.html>.
- The Guardian, December 26, 2012. Retrieved from <http://www.theguardian.com/commentisfree/2012/oct/16/presidential-debate-issues>.
- Time the Page, December 26, 2012. Retrieved from <http://thepage.time.com/2012/10/14/moderator-role-under-scrutiny-before-the-debate/>.